

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Notice of Intended Action

**Proposing rule making related to whistleblower actions
and providing an opportunity for public comment**

The Public Employment Relations Board hereby proposes to adopt Chapter 17, “State Employee Whistleblower Actions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 70A.28.

Purpose and Summary

Iowa Code section 70A.28 tasks the Public Employment Relations Board with hearing appeals of certain state employees for adverse employment action taken as a result of an employee’s disclosure of information protected by that section. This proposed chapter provides the procedural framework for such an appeal by a state executive branch employee. The procedure is similar to that used when a state employee appeals a grievance decision or disciplinary action pursuant to Iowa Code chapter 8A.

Fiscal Impact

State employee whistleblower actions involve state Executive Branch employees who allege that the State has violated whistleblower provisions and that the violation has resulted in an adverse employment action. If these allegations are proven, the State may have remedial obligations.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency’s general waiver provisions found at rule 621—1.9(17A,20).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 17, 2019. Comments should be directed to:

Amber DeSmet
Public Employment Relations Board
Jessie Parker Building, Suite 1B
510 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.4045
Email: amber.desmet@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

April 17, 2019
10 a.m. to 12 noon

Public Employment Relations Board
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 621—Chapter 17:

CHAPTER 17 STATE EMPLOYEE WHISTLEBLOWER ACTIONS

621—17.1(20,70A) Notice of appeal rights. A state executive branch employee, except a merit system employee or an employee covered by a collective bargaining agreement, may file an appeal with the public employment relations board for adverse employment action taken as a result of the employee's disclosure of information protected by Iowa Code section 70A.28.

621—17.2(20,70A) Filing of appeal.

17.2(1) Timeline. The employee must file the appeal within 30 calendar days following the later of the effective date of the action or the date a finding is issued to the employee by the office of ombudsman pursuant to Iowa Code section 2C.11A.

17.2(2) Method of filing. Appeals shall be electronically filed pursuant to 621—Chapter 16.

621—17.3(20,70A) Service of appeal. The agency shall serve a copy of the appeal upon the Iowa department of administrative services director (hereinafter referred to as the director) by ordinary mail in the manner specified in rules 621—2.15(20) and 621—16.10(20).

621—17.4(20,70A) Content of appeal.

17.4(1) The appeal shall contain the following:

- a. Name, address, telephone number, and email address of the appealing employee;
- b. Name of agency/department by which the appealing employee is/was employed;
- c. A brief statement of the reasons for the employee's appeal;
- d. A statement of the requested remedy;
- e. The name, address, telephone number, and email address of the appealing employee's representative, if any;
- f. The signature of the appealing employee or employee's representative;
- g. A statement of whether the employee requests a hearing open to the public; and
- h. A statement of whether the employee filed a complaint with the office of ombudsman and the date of the filing, if applicable.

17.4(2) Completion of the State Employee Whistleblower Action Appeal Form shall constitute compliance with all of the requirements in subrule 17.4(1).

621—17.5(20,70A) Content of director's response to the appeal.

17.5(1) The director shall have 15 days from the date of service of the employee's appeal in which to file a motion or answer with the agency.

17.5(2) The motion or answer shall contain the following:

- a.* The names of the appealing employee and the employing agency/department;
- b.* The name, address, telephone number, and email address of the employing agency's/department's representative;
- c.* The response or answer to the employee's appeal, which shall specifically admit or deny each allegation of the appeal and may set forth additional facts deemed to constitute a defense. If the appellee is without knowledge sufficient to make an admission or denial concerning an allegation, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the substance of the allegation. Additional facts set forth in the answer shall be deemed denied by the appellant;
- d.* The signature of the employing agency's/department's representative.

17.5(3) The director's motion or answer shall be electronically filed pursuant to 621—Chapter 16.

621—17.6(20,70A) Right to a hearing. An employee appealing adverse employment action pursuant to Iowa Code section 70A.28 has a right to a hearing which is closed to the public unless the employee requests a hearing open to the public. Hearings will otherwise be conducted in accordance with 621—Chapter 2.

621—17.7(20,70A) Final decisions.

17.7(1) When a majority of the board presides at the reception of the evidence in a state employee whistleblower action proceeding, the decision of the board is the final decision of the agency.

17.7(2) When a majority of the board does not preside at the reception of the evidence in a state employee whistleblower action proceeding, the presiding officer shall make a proposed decision that becomes the final decision of the agency without further proceedings unless:

- a.* There is an appeal to the board filed within 20 days of the filing of the proposed decision, or
- b.* The board, within 20 days of the filing of the proposed decision, determines to review the decision on its own motion.

621—17.8(20,70A) Review by board. Proceedings on the board's review of the proposed decision shall be in accordance with 621—Chapter 9.

621—17.9(20,70A) Other rules. Any matters not specifically addressed by the rules contained in this chapter shall be governed by the general provisions of the rules of the agency.

These rules are intended to implement Iowa Code chapters 20 and 70A.